No. 80-1358

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Petitioners-Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK AND TRUST COMPANY,
Respondents-Appellees-Plaintiffs.

RESPONDENTS REPLY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petition filed with the Court herein deals with an issue which is in fact moot.

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CONSTITUTIONAL

and

STATUTORY AUTHORITIES

United States Constitution
USCA Constitution Article 3 § 1 et seq.
Kentucky Revised Statutes

KRS 426.571 – When commissioner may convey real property – Death of party after sale. – (1) Real property may be conveyed by a commissioner appointed by the court:

(a) If by the judgment in an action a party be ordered to convey such property to another

(b) If such property have been sold under a judgment or order of the court and the sale confirmed

(2) The death of a party, after a sale, does not prevent a conveyance. It shall be made, and shall have the same effect, as if he were living.

KRS 426.572 – Requisites of commissioner's deed – The deed of the commissioner shall refer to the judgment orders and proceedings authorizing the conveyance, so that the same may be readily found.

KRS 426.573 – Title passed by deed made pursuant to judgment – A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

KRS 426.574 – Title passed by deed made pursuant to order of sale – A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

KRS 426.005 – Personal Judgment in action to enforce mortgage or line – When Mortgage may be enforced – (1) in an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally.

(2) In an action to enforce a mortgage or other lien, a sale of the property may be ordered without giving time to pay money or do other act.

SUPREME COURT RULES

Sup. Crt. Rule 34 (6)

Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

COUNTERSTATEMENT OF CASE

In light of the various mis-statements of fact in Petitioners' Statement of the Case, Respondents must clarify the issue at Bar.

In October 1976, Peoples Liberty Bank filed suit to enforce a promissory note upon which the Petitioners were grossly in default. As stated in Petitioners' statement of the case, the Kenton Circuit Court did, in fact, issue a Writ of Possession to Peoples Liberty Bank based on said action. Pl. Ex. N.

Pursuant to said Writ there was a Master Commissioner's Sale whereat Peoples Liberty Bank purchased the property in question and received the Master Commissioner's Deed thereto.

A forcible detainer action was then filed against Petitioners by Peoples Liberty Bank and same was granted by the Kenton Quarterly Court.

As Petitioners entire appendix reflects, this matter was fully litigated and the Quarterly Court's Judgment was affirmed throughout every appellate level of the Kentucky Court System.

The Respondent, having not executed on the order from the Kenton Quarterly Court, then proceeded to sell the property to the Hon. Richard Slukich.

In order to clear the Kenton Circuit Court Docket of needless actions, the Respondent then moved to dismiss the Forcible Detainer Action at Respondent's expense. Petitioners now bring this dismissal of a forcible detainer action before the Supreme Court of the United States.

ARGUMENT

All of the Petitioners' machinations and illusions of conspiracy not withstanding, the singular issue at Bar is whether the forcible detainer action dismissed at State Level by Respondent, at Respondent's expense, is moot. Such is Respondent's contention herein.

First, the Respondent must assert that Petitioners have subjected all parties hereto to a frivilous Appeal by including in their petition "burdensome, irrelevant, immaterial, and scandalous matter" in an attempt to cloud the very clear issue already conclusively litigated at state level. Such being the case, Respondent asserts that Petitioners' Brief should be disregarded and stricken by the Court. Sup. Ct. Rule 34.6

The Respondent further submits that, by dissecting the true issue from the spurious smoke screen of false and immaterial allegations asserted by Petitioners, the Court will find that the Petitioners have continuously appealed the dismissal of an action throughout State Court, a dismissal which in effect was a success to the Petitioners.

The facts are basic. Petitioners defaulted on their mortgage to Peoples Liberty Bank. The property was then sold

pursuant to the judgment on said note and Peoples Liberty Bank purchased the property by Master Commissioner's deed.

A forcible detainer action was then filed by Respondent in the now non-existent Kenton Quarterly Court. This was all authorized by Kentucky Law and pursued according to same. KRS 426.571; KRS 426.005; KRS 426.573; KRS 426.574; *Pemberton* v. *Harden,* Ky., 80 SW 2d 589 (1935); KRS 426.572.

As Petitioners' Brief clearly reflects, this forcible detainer order made its way through all levels on Kentucky Appellate Review which continually held in Respondent's favor. The property was then sold to a third party and, there no longer existing an Owner-Occupant relationship between Petitioners and Respondent dismissed the unexecuted forcible detainer action at its own expense, recognizing the matter as moot. Ky. CR 41.01

It must be asserted by Respondent that, should the dismissal of the forcible detainer action in Kenton Quarterly Court be reversed, a new hearing will be held where it will be established that no owner-occupant relationship exists and the matter will again be dismissed at Respondent's cost.

There exists no case or controversy before this court which is in a form historically viewed as capable of Resolution through judicial process. USCA Const. art. 3 § 1 et seq.; *Crossen* v. *Breckinridge,* 446 F. 2d 833, on remand 344 F. Supp. 587 (1971); see *Varney* v. *Weinberger,* 373 F. Supp. 678, affirmed 511 F. 2d 1404 (1974).

This matter is blatantly moot, and the Petition should therefore be dismissed.

CONCLUSION

In light of the fact that no case or controversy exists for which there is a remedy by judicial process and the obvious frivolity of the Petitioners' request for Certiorari, the within matter should be dismissed and the Petition for Writ of Certiorari denied.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that copies of the foregoing Reply Brief have been served by the United States Mail upon the following: Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011; and Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011 on this the 23 day of March, 1981.

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